

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

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FILE: B-213018

DATE: February 23, 1984

MATTER OF: Synergetics International, Inc.

DIGEST:

1. Allegation that specifications are inadequate and restrictive of competition is dismissed as untimely when not filed before the closing date for receipt of quotations.
2. Agency may award purchase order to federal supply schedule (FSS) contractor who reduces its contract price without giving notice to General Services Administration (GSA).
3. Whether, by reducing its prices without notice to GSA, FSS contractor violated its contract with GSA is a matter of contract administration which GAO will not consider under its bid protest procedures.
4. Agency may award combined contract for FSS and non-FSS items to offeror who submitted low aggregate quote in response to request for quotations.

Synergetics International, Inc. (Synergetics), protests a purchase order awarded to Sutron Corporation (Sutron) pursuant to a request for quotations (RFQ) issued by the Army Corps of Engineers (Corps) for communications equipment.

Synergetics alleges that the award to Sutron is improper because the RFQ specifications were ambiguous and defective, Sutron misquoted prices for items listed on its federal supply schedule (FSS) contract, Sutron misrepresented that certain offered items were on its FSS contract and the Corps awarded a contract for non-FSS contract items without conducting a competitive procurement.

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The protest is denied in part and dismissed in part.

On August 1, 1983, the Corps issued the RFQ to three contractors on the General Services Administration (GSA) federal supply schedule, group 58, part IX. The RFQ sought quotes to supply a Geostationary Operational Environmental Satellite (GOES) station, data collection platforms and associated equipment. Quotations were submitted on August 12. On August 22, the three contractors met with the Corps to demonstrate and explain their products. After this meeting, the Corps' evaluation panel determined that the equipment offered by Synergetics would not meet its needs because, contrary to the specification requirements, the system had a minicomputer interfacing between the receive site and the Corps' Harris computer. The panel also determined that Sutron's equipment met its needs and that Sutron offered to supply the equipment at the lowest price. Consequently, an award was made to Sutron on September 9, 1983.

Synergetics first alleges that the RFQ specifications were inadequate and restrictive of competition. This allegation concerns improprieties in the solicitation and was required to be filed before August 12, the closing date for receipt of quotations. Thus, since we did not receive Synergetics' protest until September 13, the allegation is dismissed as untimely. See Precision Dynamics Corporation, B-207823, July 9, 1982, 82-2 CPD 35; The Interior Steel Equipment Co., B-209016, February 8, 1983, 83-1 CPD 139.

Synergetics next contends that the award to Sutron is improper because Sutron offered to supply certain items on its FSS contract at prices lower than those listed in Sutron's FSS contract. Synergetics alleges that if the prices listed in Sutron's FSS contract are used, Synergetics is the low offeror. Synergetics acknowledges that FSS contractors may reduce their prices for schedule items without prior GSA approval. Synergetics maintains, however, that the lower prices do not become effective until GSA is notified of the price reduction. In this regard, Synergetics contends that both Sutron and the Corps violated the requirement to notify GSA of a price reduction within 10 days of the reduction.

The Corps responds that it was not aware that Sutron quoted prices different from those in its FSS contract until Synergetics notified it of this fact. The Corps then verified Sutron's prices with Sutron. The Corps states that Sutron acknowledged that some of its quoted prices were lower than its FSS prices, but that the lower prices were the effective prices. The Corps denies that it could not

award a contract to Sutron at the lower prices until GSA was notified of the price reduction.

A contractor may offer to supply items listed on its FSS contract at prices lower than the schedule prices and a procuring agency may award a contract at the reduced price without prior notice to or approval from GSA. Dictaphone Corporation, B-193716, March 23, 1979, 79-1 CPD 200; Lanier Business Products Inc., B-211641, October 25, 1983, 83-2 CPD 493. Thus, the Corps' award to Sutron at the lower prices does not provide a basis to disturb the award to Sutron. In this regard, we note that the schedule requires the procuring agency to notify GSA within 10 days after it awards a contract to an FSS contractor at a price lower than the contract's FSS price. Further, whether Sutron, as required by its FSS contract, filed notice of its price reduction with GSA does not concern an impropriety in the award to Sutron which may be considered under our Bid Protest Procedures. Rather, this issue must be resolved by GSA as a matter of administration of Sutron's FSS contract. Sony Industries, B-197300, June 4, 1980, 80-1 CPD 382.

Finally, Synergetics alleges that Sutron misrepresented that certain products and services were on its FSS contract. Concerning this, Synergetics also claims that because an award was made to Sutron for these open-market items on the basis of Sutron's quotation, the Corps has violated the prohibition against awarding contracts on a noncompetitive basis. Synergetics states that it also offered to supply a nonscheduled item, but its offer was rejected because the Corps stated that only scheduled items would be considered.

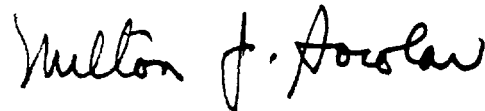
The Corps acknowledges that certain items for which an award was made to Sutron are not on Sutron's FSS contract. The Corps states that it was not aware of this before it awarded the contract to Sutron because it does not have copies of the FSS contracts at its office. The Corps further states that even if it had known that the items were not on Sutron's schedule, it would have acquired the items from Sutron because the non-FSS items involved had to be compatible with the schedule items and their cost was small compared to the total cost of the procurement. Finally, the Corps states that it did not consider Synergetics' offer to supply a nonscheduled item because the offer was not submitted until after the award was made to Sutron.

An agency may procure FSS items and non-FSS items in a single procurement and award a contract to the offeror offering the low aggregate price. See Stanley and Rack, B-204565, March 9, 1982, 82-1 CPD 217; Rack and Stanley,

B-205059, May 25, 1982, 82-1 CPD 494. Thus, Synergetics' allegation does not provide a basis to disturb the award to Sutron or to find that the Corps violated procurement regulations. Moreover, to the extent that the Corps did not consider Synergetics' proposal to supply a nonscheduled item, the record shows that although Synergetics had offered the item by phone on September 2, the Corps did not receive the formal offer until September 9. At this point, since it had already awarded a purchase order to Sutron, the Corps was not required to consider the offer.

The protest is denied in part and dismissed in part.

Although as noted above, the Corps did not notify GSA within 10 days after it awarded the contract to Sutron at a price lower than Sutron's FSS contract price, this does not affect the validity of the contract award to Sutron. However, we are forwarding a letter to the Secretary of the Army with our recommendation that the Corps comply with this requirement in future procurements.



Acting Comptroller General
of the United States